SEP 18 1953
HAROLD B. WILLEY, Clerk

Nos. 280, 281

# Supreme Court of The United States

October Term, 1953

PHILLIPS PETROLEUM COMPANY,

Petitioner,

v.

STATE OF WISCONSIN AND PUBLIC SERVICE COMMISSION OF WISCONSIN; CITY OF DETROIT, MICHIGAN; CITY OF KANSAS CITY, MISSOURI; CITY OF MILWAUKEE, a municipal corporation; COUNTY OF WAYNE, MICHIGAN; and THE FEDERAL POWER COMMISSION,

Respondents.

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STATE OF TEXAS AND THE RAILROAD COMMISSION OF TEXAS; CORPORATION COMMISSION OF OKLAHOMA; and STATE OF NEW MEXICO AND OIL CONSERVATION COMMISSION OF NEW MEXICO,

Petitioners,

v.

STATE OF WISCONSIN AND PUBLIC SERVICE COMMISSION OF WISCONSIN; CITY OF DETROIT, MICHIGAN; CITY OF KANSAS CITY, MISSOURI; CITY OF MILWAUKEE, WISCONSIN; COUNTY OF WAYNE, MICHIGAN; and THE FEDERAL POWER COMMISSION,

Respondents.

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ON PETITIONS OF WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## BRIEF IN OPPOSITION TO GRANTING OF WRITS

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### OPINION BELOW

The opinion and order of the Federal Power Commission (R. 1682-1835) with the dissenting opinion of Commissioner Buchanan is reported in 90 P. U. R. (NS) 325. The opinion of the Court of Appeals (R. 1857-73) is not yet reported.

### JURISDICTION

The jurisdictional requisites are adequately set forth in the petitions.

## QUESTION PRESENTED

1. Whether Phillips Petroleum Company is a "natural gas company" within the meaning of the Natural Gas Act and subject to the jurisdiction of the Federal Power Commission to fix rates at which Phillips sells natural gas at wholesale to five interstate pipeline companies for interstate transportation and resale.

## STATUTES INVOLVED

The pertinent provisions of the Natural Gas Act are printed in Appendix A of the petitions.

## STATEMENT OF THE CASE

There is no dispute as to the manner in which Phillips Petroleum Company actually operates its natural gas business. It is engaged in carrying natural gas in progressively larger diameter pipelines from wells in Oklahoma, Texas, and New Mexico to 10 processing plants located in Texas and New Mexico where sulphur, water, dust, or similar foreign matter as well as certain hydro-carbons are removed. After processing the residue gas is carried relatively short distances in pipelines from the processing plant where it is delivered and sold in interstate commerce to 5 interstate pipeline companies, which pipeline companies in turn carry the gas in pipelines for resale to many distributing companies supplying the ultimate consumer in the States of Arizona, California, Nebraska, Iowa, Minnesota, Missouri, Illinois, Indiana, Kansas, Michigan, Ohio, South Dakota, and Wisconsin. R. 753-58; 1692-1711; 1827-34.

Some of the natural gas sold in interstate commerce by Phillips to the 5 interstate pipeline companies is produced by itself *but* it also buys large quantities from other producers, (Petition in No. 280, p. 6; Ex. 79; R. 345, 1212-13) and hence is a "wholesaler" of gas in the sense it sells gas produced by others. It is also a "wholesaler" of gas by reason of its sales for resale to the 5 interstate pipeline companies.

The final comingling of gas from the different lines takes place in each case no later than in the processing plant. Petition in No. 280, p. 5. There are also instances where gas is carried in large diameter pipes in constant volumes to the processing plant for considerable distances with no connections in or out of said lines for the last several miles before reaching the plant, and the Power Commission so found. R. 1743. One such pipeline crosses the Oklahoma-Texas state line. R. 1692.

In normal operations there is a continuous and uninterrupted flow of gas in interstate commerce from the wells to and through the processing plant, and then to the point of delivery and sale to each of the interstate pipeline companies, and from there to the points of ultimate consumption in other States. R. 200-1; 257-61; 306-8; 315-17; 320-24; 626-7; 1827-34.

The Power Commission *found* (a) that the sales by Phillips to the 5 interstate pipeline companies are sales in interstate commerce of natural gas for resale for ultimate public consumption, and (b) that Phillips is engaged

in transportation of natural gas in interstate commerce.[1] Finding (a) is based on a concession by Phillips that such sales are sales in interstate commerce for resale. R. 1712; 1740.

## ARGUMENT

This case does not fall within any of the reasons specified in Rule 38, paragraph 5 (b) for granting a writ of certiorari. Specifically:

(a) There is no conflict with the decision of any Court of Appeals on the same matter. The decision of the Court of Appeals here is in accord with its prior decision and also decisions of other courts of appeal. *Peoples Natural Gas Co. v. Federal Power Comm.*, 75 U. S. App. D. C. 235, 127 F. 2d 153 (1942), certiorari denied 316 U. S. 700; *Interstate Natural Gas Co. v. Federal Power Comm.*, (C. A. 5) 156 F. 2d 949 (1946), affirmed 331 U. S. 682. In *State Corporation Comm. of Kansas v. Federal Power Comm.*, (C. A. 8), No. 14704, and *Northern Natural Gas Co. v. Federal Power Comm.*, (C. A. 8), Nos. 14706, 14733 and 14743, decided July 20, 1953, — F. 2d —, the court said:

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[1] The exact language of the Power Commission is as follows: (R. 1712) "• • • For it [Phillips Petroleum Company] correctly concedes that the sales involved here are sales in interstate commerce for resale. Nor can there be any doubt that Phillips' movement of that gas from the points of production to the points of sale constitutes transportation in interstate commerce as a matter of constitutional law. Indeed, this is in part implicit in Phillips' concession respecting the sales." • • •

(R. 1740) "• • • It [Phillips Petroleum Company] concedes, and on the record here it could not deny, that the sales involved are sales 'in interstate commerce of natural gas for resale for ultimate public consumption' within Section 1 (b)'s affirmatively stated coverage of the Act when considered independently of the exemption of production and gathering. Also, its operations, clearly include the 'transportation of natural gas in interstate commerce' similarly within that affirmatively stated coverage when considered independently of the exemption of production and gathering."

"We are not in disagreement with the decision of the Court of Appeals for the District of Columbia in this Phillips Case."

(b) There are decisions of this court which directly settle the questions involved. There is no conflict between the decision of the Court of Appeals here and applicable decisions of this court. To the contrary, the decision of the Court of Appeals here is fully in accord with decisions of this court in litigation involving the Natural Gas Act and the principles therein applied and it is correct.

The governing principle is one of constitutional law, namely that sales of natural gas in interstate commerce for resale are beyond the constitutional competence of the states to regulate. The applicable cases of this court are *Interstate Natural Gas Co. v. Federal Power Comm.*, 331 U. S. 682 (1947); *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U. S. 498 (1942); *Federal Power Comm. v. Hope Natural Gas Co.*, 320 U. S. 591 (1944); *Colorado Interstate Gas Co. v. Federal Power Comm.*, 324 U. S. 581 (1945); *Panhandle Eastern Pipe Line Co. v. Public Service Comm. of Indiana*, 332 U. S. 507 (1947); *Federal Power Comm. v. East Ohio Gas Co.*, 338 U. S. 464 (1950); *Panhandle Eastern Pipe Line Co. v. Michigan Public Service Comm.*, 341 U. S. 329 (1951). See *United States v. Public Utilities Comm.*, 345 U. S. 295 (1953) 311.

## CONCLUSION

The decision below is correct and fully accords with the applicable decisions of this court which we have cited. There is no conflict of decisions. We submit the petitions for a writ of certiorari in Nos. 280 and 281 should be denied.

Respectfully submitted,

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